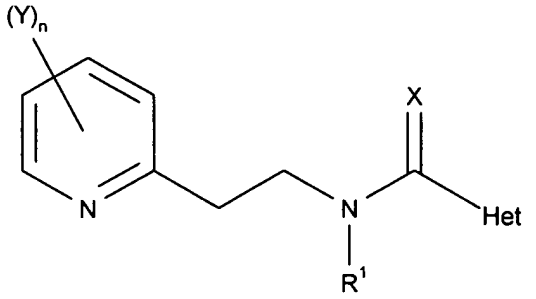
REMARKS/ARGUMENT

Claims 1 through 15 are pending in the application. Claims 11 through 13 are withdrawn, and claims 1 through 13 and 15 are amended.

1. Rejection under 35 U.S.C. § 103(a)

Claims 1 through 10, 14, and 15 are rejected under 35 U.S.C. § 103(a) as being unpatentable over Mansfield et al. (EP 1,449,841) in view of Cooke et al. (U.S. Patent No. 6,821,992). The Applicants traverse this rejection and request reconsideration.

Mansfield et al. disclose a compound of general formula (I):



(I)

in which:

X is an oxygen atom or a sulphur atom;

Y is the same or different and is selected from the group consisting of a halogen atom, a nitro group, a cyano group, a hydroxy, a carboxyl group, a C_1-C_8-alkyl, a C_1-C_6-halogenoalkyl having 1 to 5 halogen atoms, a C_1-C_8-alkylamino, a di-C_1-C_8-alkylamino, a C_1-C_8-alkoxy, a C_1-C_6-halogenoalkoxy having 1 to 5 halogen atoms, a C_1-C_8-alkylthio, a C_1-C_6-halogenoalkylthio having 1 to 5 halogen atoms, a C_2-C_8-alkenyloxy, a C_2-C_8-halogenoalkenyloxy having 1 to 5

halogen atoms, a C_3-C_8-alkinyloxy, a C_3-C_8-halogenoalkinyloxy having 1 to 5 halogen atoms, a C_3-C_8-cycloalkyl, a C_1-C_8-alkoxycarbonyl, a C_1-C_8-alkylsulphinyl, a C_1-C_8-alkylsulphonyl, a C_1-C_8-halo-genoalkylsulphinyl having 1 to 5 halogen atoms, a C_1-C_8-halogenoalkylsulphonyl having 1 to 5 halogen atoms or a C_1-C_6-alkoximino-C_1-C_6-alkyl;

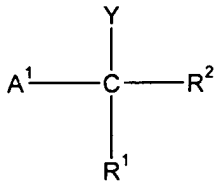
R^1 is selected from the group consisting of a hydrogen atom, a cyano group, a nitro group, a formyl group, a C_1-C_6-alkyl, a C_1-C_6-alkylcarbamoyl, a C_2-C_6-alkenyl, a C_2-C_6-alkynyl, a C_1-C_6-halogenoalkyl having 1 to 7 halogen atoms, a C_1-C_6-alkoxy-C_1-C_6-alkyl, a C_1-C_6-cyanalkyl, a C_1-C_6-aminoalkyl, a C_3-C_6-cycloalkyl, a C_1-C_6-alkylcarbonyl, a C_1-C_6-halogenalkylcarbonyl having 1 to 5 halogen atoms, a C_1-C_6-alkoxy-C_1-C_6-alkylcarbonyl, a C_1-C_6-alkylsulfanyl or a C_1-C_6-halogenalkylsulfanyl having 1 to 5 halogen atoms;

n is 1, 2, 3 or 4; and

Het represents an optionally substituted 5-, 6-, or 7-membered non-fused heterocycle with one, two or three heteroatoms independently selected from the group consisting of substituted or unsubstituted nitrogen, unsubstituted sulphur, and oxygen; Het being linked by a carbon atom.

The Examiner has acknowledged that the compounds of Mansfield et al. differ from those of the present invention in that, in Mansfield et al., R^1-R^4 are all hydrogen, whereas, in the compounds of the present invention, at least one of R^1-R^4 is not hydrogen. In view of this, the Examiner has cited Cooke et al. to show the "optional interchangeability of hydrogen, alkyl, halogen, cyano, hydroxyl, amino, etc."

Cooke et al. claim a compound or a complex or salt thereof of the general formula I:



(I)

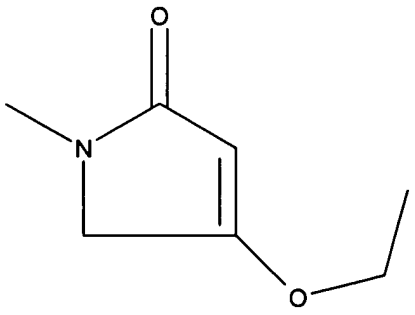
wherein:

A^1 is 2-pyridyl substituted with from one to four moieties independently selected from the group consisting of halogen and trifluoromethyl, provided that at least one moiety is trifluoromethyl;

Y is a moiety selected from the group consisting of $-L-A^2$ and $-L^1-A^3$

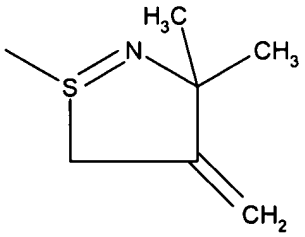
wherein:

A^2 is selected from the group consisting of unsubstituted or substituted phenyl, cyclohexyl, cyclopropyl, thienyl, imidazolyl, tolyl, and



wherein any substituents on A^2 are independently selected from the group consisting of alkyl, halogen, and haloalkyl;

A^3 is selected from the group consisting of unsubstituted or substituted phenyl, pyridyl, thiodiazolyl, triazolyl, fluorenyl, tolyl, tetrazolyl, pyrimidinyl, imidazolyl, benzthiazolyl, quinolinyl, and



wherein any substituents on A^3 are selected from the group consisting of alkyl, halogen, haloalkyl, hydroxyl, and phenyl;

L is a 3-atom linker selected from the group consisting of $-N(R^5)C(=X)N(R^6)-$, $-N(R^5)C(=X)CH(R^3)-$, $-CH(R^3)N(R^5)CH(R^4)-$, $-CH(R^3)N(R^5)C(=X)-$, $-ON(R^5)C(=X)-$; wherein the left hand side of L is attached to the central carbon atom of formula I;

L^1 is a 4-atom linker selected from the group consisting of $-N(R^9)C(=X)X^1CH(R^7)-$, $-N(R^9)C(=X)CH(R^7)CH(R^8)-$; $-N(R^9)C(R^7)=C(R^8)C(=X)-$, $-N(R^9)C(=X)C(R^7)(R^8)SO_2-$, and $-N(R^9)C(=X)C(R^7)(R^8)X^1$; wherein the left hand side of L^1 is attached to the central carbon atom of formula I;

R^1, R^2, R^3, and R^4 are independently selected from the group consisting of hydrogen or alkyl;

R^5, R^6, R^7, and R^8 are independently selected from the group consisting of hydrogen, alkyl, and acyl;

X is selected from the group consisting of oxygen and sulfur;

X^1 is selected from the group consisting of oxygen and -N(R^9)-; and

R^9 is selected from the group consisting of hydrogen and alkyl.

The publication date of the primary reference, Mansfield et al. (EP 1,449,841), is August 25, 2004. It is respectfully submitted that the present application is entitled to an effective filing date of either the filing date of the corresponding European Patent Application (EP 1 574 511), March 3, 2004, or the filing date of the corresponding PCT application, March 1, 2005, or both. In either case, the Mansfield et al. reference was not published more than one year prior to the priority date of the present application and is therefore unavailable as prior art against its patentability.

Accordingly, it is requested that the rejection of claims 1 through 10, 14, and 15 under 35 U.S.C. § 103(a) as being unpatentable over Mansfield et al. in view of Cooke et al. be withdrawn.

2. Rejection of Claim 15 under 35 U.S.C. § 112, First Paragraph

Claim 15 is rejected under 35 U.S.C. § 112, first paragraph, because, according to the Examiner, the specification, while being enabling for treating fungi on crops, does not reasonably provide enablement for the prevention of fungi.

Claim 15 is amended by deletion of the phrase "preventively or curatively." Accordingly, it is requested that the rejection of claim 15 under 35 U.S.C. § 112, first paragraph, be withdrawn.

3. Rejection of Claim 1 under 35 U.S.C. § 112, First Paragraph

Claim 1 is rejected under 35 U.S.C. § 112, first paragraph, as failing to comply with the enablement requirement because, according to the Examiner, "The expressions 'pyrazole . . . substituted in the ortho position,' 'metallic complexes' and 'metalloidic complexes' are employed with considerable abandon in claim 1 with no indication given as to what substituents really are."

4. Rejection of Claim 1 under 35 U.S.C. § 112, Second Paragraph

Claim 1 is rejected under 35 U.S.C. § 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter that the Applicants regard as the invention.

Specifically, according to the Examiner, the expressions "pyrazole . . . substituted in the ortho position," "metallic complexes," and "metalloidic complexes" in claim 1 are indefinite;

and the term "general" in claim 1 is indefinite because it suggests that the compounds have other structures not contemplated by the Applicants.

Claim 1 is now amended so that the expressions"metallic complexes," "metalloidic complexes," and "general" no longer appear therein. Further, the definition of Het has been changed to read "at least substituted in the position immediately adjacent to said carbon atom linkage." This claim has never mentioned pyrazole, per se.

The Examiner has also said, "The plural 's' on 'salts' makes claim 1 read on mixtures rather than specific compounds." The Applicants respectfully disagree. Those skilled in the art will understand that amines readily form salts of various kinds with well-known acidic materials and that, in general, their properties are not significantly modified thereby. In the present case, where there will be more than one amine group in the same molecule, it is possible that such an acidic material, in the same synthesis, might attach itself at any of several places on the same molecule. It would be unfair to the Applicants to force them to limit their claims to a single possibility.

Accordingly, it is requested that the rejections of claim 1 under 35 U.S.C. § 112, first and second paragraphs, be withdrawn.

5. Rejection for Obviousness-Type Double Patenting

Claims 1 through 10, 14, and 16 are provisionally rejected on the ground of non-statutory obviousness-type double patenting as being unpatentable over claims 1 through 14, 18, and 19 of co-pending Application No. 12/292,676.

As pointed out in the Office Action, a timely filed terminal disclaimer in compliance with 37 C.F.R. § 1.321(c) may be used to overcome an actual or provisional rejection based on a non-statutory double patenting ground provided the conflicting application or patent is shown to be commonly owned with this application.

The present application and U.S. Patent Application No. 12/292,676 are commonly owned by Bayer Cropscience S.A.

A Terminal Disclaimer Under 37 C.F.R. § 1.321(b) and (c) disclaiming, with the customary exceptions, the terminal part of the statutory term of any patent granted on the instant application that would extend beyond the expiration date(s) of the full statutory term(s) of any patent(s) issued on U.S. Patent Application No. 12/292,676 is filed herewith.

Accordingly, it is requested that the provisional rejection of claims 1 through 10, 14, and 16 on the ground of non-statutory obviousness-type double patenting as being unpatentable over claims 1 through 14, 18 and 19 of co-pending Application No. 12/292,676 be withdrawn.

6. Claim Objections

Claims 2 through 10 and 15 are objected to because the term "oxides" is misspelled in claim 1, last line, and the term "characterized" is misspelled in claim 1, the last line. Claim 1 is now amended to overcome these objections.

7. Information Disclosure Statement

The Examiner objected to the Information Disclosure Statement of November 24, 2008, for failing to include copies of foreign citations. A copy of the Information Disclosure

Statement is re-submitted with the citations. If a fee is due, it may be charged to Deposit Account Number 15-0700.

8. Conclusion

In view of the foregoing, it is submitted that this application is in condition for allowance. Favorable consideration is requested.

Respectfully submitted,

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